IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.534/1996
(Director, Mines & Geology Deptt.
Vs. Shambhoo Singh & Ors.)

Date of order : 21.11.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.N. Tiwari, Dy. Govt. Advocate.
Mr. Sanjay Mathur, for the respondent No.1.

By way of filing this writ petition, the Director, Mines & Geology Department, Udaipur has challenged the award dated 8.2.1993 (Annexure-7) passed by Judge, Labour Court, Udaipur whereby the Judge, Labour Court has passed an award in favour of the respondent No.1 and held that order of retrenchment of the respondent No.1 was not valid and further it is directed that he should be reinstated and shall be paid wages upto 3.3.1992.

I have perused the impugned award dated 8.2.1993.

In the impugned award dated 8.2.1993, it is

specifically observed at page No.3 that "प्रार्थी ने जिरह में यह स्वीकार किया हैकि सेवा से निकाले जाने के बाद उसने जोधपुर में शारीरिक शिक्षा की ट्रेनिगं की थी और 3-3-92 से उसकी नियुक्ति शारीरिक शिक्षक के पद पर हो चुकी है ।"

In this view of the matter, the day on which the award was passed the respondent No.1 was in service as physical teacher. Likewise as per the facts of the case, the respondent No.1 was appointed on 14.5.1986 on daily rate basis and he worked upto 30.11.1988. According to the facts of the case, he was not appointed after due process of law, so also, he was given notice in accordance with the Section 35 (3) of Work-Charge Service Rules but the Labour Court has held that before terminating the services of the respondent No.1, no notice under Section 25-F of the Industrial Disputes Act, 1947 was given nor any compensation was given to the workman-respondent No.1, therefore, his termination order was held to be invalid.

In the present writ petition, the operation of the award dated 8.2.1993 was stayed by this Court vide order dated 11.7.1997 and the said stay order is still in force. Therefore, obviously, it is clear that the workman – respondent No.1 was not reinstated.

From the aforesaid facts, it is clear that

the respondent No.1 was not appointed after due process of law, so also he worked as daily rated employee from 14.5.86 to 30.11.1988.

In my opinion, when workman-respondent No.1 is already in other employment, then after lapse of 19 years, it is not proper to pass any order for reinstatement of the workman-respondent No.1. In these circumstances, I deem it just and proper to modify the award dated 8.2.1993 while upholding the finding of Labour Court with regard to violation of provisions of Section 25-F of the Industrial Disputes Act before terminating the services of the respondent No.1.

Accordingly, the writ petition is partly allowed. The order of reinstatement of the respondent No.1 is set aside and in lieu of reinstatement, the petitioner-Department is directed to pay compensation of Rs.30,000/- to the workman-respondent No.1 within a period of three months from the date of receipt of certified copy of this order.

(GOPAL KRISHAN VYAS), J.

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